

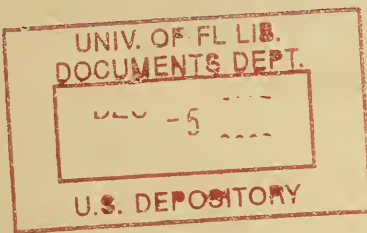
NATIONAL RECOVERY ADMINISTRATION

CODE OF FAIR COMPETITION

FOR THE

BRUSH MANUFACTURING
INDUSTRY

AS APPROVED ON MARCH 23, 1934



UNITED STATES
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Approved Code No. 360

CODE OF FAIR COMPETITION
FOR THE
BRUSH MANUFACTURING INDUSTRY

As Approved on March 23, 1934

ORDER

APPROVING CODE OF FAIR COMPETITION FOR THE BRUSH MANUFACTURING INDUSTRY

An application having been duly made pursuant to and in full compliance with the provisions of Title I of the National Industrial Recovery Act, approved June 16, 1933, for approval of a Code of Fair Competition for the Brush Manufacturing Industry, and hearings having been duly held thereon and the annexed report on said Code, containing findings with respect thereto, having been made and directed to the President:

NOW, THEREFORE, on behalf of the President of the United States, I, Hugh S. Johnson, Administrator for Industrial Recovery, pursuant to authority vested in me by Executive Orders of the President, including Executive Order No. 6543-A, dated December 30, 1933, and otherwise; do hereby incorporate by reference said annexed report and do find that said Code complies in all respects with the pertinent provisions and will promote the policy and purposes of said Title of said Act; and do hereby order that said Code of Fair Competition be and it is hereby approved, provided that Articles XIV and XV be eliminated from the Code.

HUGH S. JOHNSON,
Administrator for Industrial Recovery.

Approval recommended:

GEO. L. BERRY,
Division Administrator.

WASHINGTON, D.C.,
March 23, 1934.

REPORT TO THE PRESIDENT

The PRESIDENT,
The White House.

SIR: A Public Hearing on the Code of Fair Competition for the Brush Manufacturing Industry, submitted by the American Brush Manufacturers Association, located at 505 Arch Street, Philadelphia, Penna., was conducted in Washington on the 21st of November, 1933, in accordance with the provisions of the National Industrial Recovery Act. The Association claims to represent 85 percent of the Industry.

The maximum hours permitted under this Code are forty (40) per week, averaged over a three months period, with forty-eight hours permitted in any one week. Repairmen, engineers, electricians and cleaners are permitted to work an average of forty-four (44) hours per week during any three months period. Truckmen, watchmen and firemen are permitted to work forty-eight (48) hours per week.

The minimum wage provided in this Code is thirty-two and a half cents ($32\frac{1}{2}\text{¢}$) per hour. Females performing substantially the same work as males are to be paid the same rate of pay as male employees. Provision is made for adjustment of wages above the minimum.

The Brush Manufacturing Industry includes establishments in which brushes and allied products are manufactured, repaired and sold originally. Imports have caused a serious problem to this industry, those from Japanese and German sources being the most troublesome, having entered this country in large quantities at extremely low unit prices. The making of brushes in Federal penitentiaries is another source of severe competition. The most modern of equipment is now being used by these institutions thus supplying the market with brushes which otherwise would be purchased from the industry.

In 1929 approximately 7,200 people were employed in this industry. This had dropped to 5,400 in June, 1933. In October, 1933, it is estimated that this had risen to 6,600, an increase of 23.9 percent. This is only 8% under the peak year of 1929.

Reports from members of the industry disclose that the minimum wage proposed in the Code will mean an increase over the minimum, just prior to the President's Re-Employment Agreement, of approximately 50 percent and an increase over 1929 of approximately 30 percent.

FINDINGS

The Deputy Administrator in his final report to me on said Code having found as herein set forth and on the basis of all the proceedings in this matter;

I find that:

(a) Said Code is well designed to promote the policies and purposes of Title I of the National Industrial Recovery Act, including

removal of obstructions to the free flow of interstate and foreign commerce which tend to diminish the amount thereof and will provide for the general welfare by promoting the organization of industry for the purpose of cooperative action among the trade groups, by inducing and maintaining united action of labor and management under adequate governmental sanctions and supervision, by eliminating unfair competitive practices, by promoting the fullest possible utilization of the present productive capacity of industries, by avoiding undue restriction of production (except as may be temporarily required), by increasing the consumption of industrial and agricultural products through increasing purchasing power, by reducing and relieving unemployment, by improving standards of labor, and by otherwise rehabilitating industry.

(b) Said Industry normally employs not more than 50,000 employees; and is not classified by me as a major industry.

(c) The Code as approved complies in all respects with the pertinent provisions of said Title of said Act, including without limitation Subsection (a) of Section 3, Subsection (a) of Section 7, and Subsection (b) of Section 10 thereof; and that the applicant association is an industrial association truly representative of the aforesaid Industry; and that said association imposes no inequitable restrictions on admission to membership therein.

(d) The Code is not designed to and will not permit monopolies or monopolistic practices.

(e) The Code is not designed to and will not eliminate or oppress small enterprises and will not operate to discriminate against them.

(f) Those engaged in other steps of the economic process have not been deprived of the right to be heard prior to approval of said Code.

This Industry has cooperated in a most satisfactory manner with the Administrator in the preparation of this Code. From evidence adduced during this hearing and from recommendations and reports of the various Advisory Boards it is believed that this Code as now proposed and revised represents an effective, practical, equitable solution for this Industry and for these reasons this Code has been approved.

Respectfully,

HUGH S. JOHNSON,
Administrator.

MARCH 23, 1934.

CODE OF FAIR COMPETITION FOR THE BRUSH MANUFACTURING INDUSTRY

ARTICLE I—PURPOSES

To effectuate the policies of Title I of the National Industrial Recovery Act, the following provisions are established as a Code of Fair Competition for the Brush Manufacturing Industry and shall be the standard of fair competition for this Industry and binding upon every member thereof.

ARTICLE II—DEFINITIONS

1. The term "Industry" or "Brush Manufacturing Industry", as used herein includes the manufacturing, repairing and original selling and distributing by manufacturers of brushes, and kindred and allied products twisted in wire, and such branches or subdivisions thereof as may from time to time be included under the provisions of this Code, by the President of the United States after such notice and hearing as he may prescribe.

2. The term "member of the Industry" includes, but without limitation, any individual, partnership, association, corporation or other form of enterprise engaged in the industry, either as an employer or on his or its own behalf.

3. The term "employee" as used herein includes any and all persons engaged in the industry, however compensated, except a member of the industry.

4. The term "carrying account" as used herein means one where an understanding exists between the seller and the buyer to the effect that the buyer shall be required to pay his account with the seller down only to a specified amount, regardless of when the amount is due, resulting substantially in the effect of a consignment to that extent.

5. The terms "Act" and "Administrator" as used herein mean respectively Title I of the National Industrial Recovery Act, and the Administrator for Industrial Recovery.

ARTICLE III—HOURS

1. No employee, except as hereinafter provided, shall be permitted to work more than forty (40) hours per week, when averaged over any three months period, nor more than forty-eight (48) hours in any one week, nor more than ten (10) hours in any one day.

(a) The provisions of this article shall not apply to employees engaged in an executive, administrative, supervisory and/or technical capacity (excluding however persons engaged in skilled operations), who receive thirty-five dollars (\$35.00) or more per week, nor to outside salesmen.

(b) No repairman, engineer, electrician or cleaner, excluding machine cleaners, shall be permitted to work more than an average of forty-four (44) hours per week during any three (3) months period nor more than forty-eight (48) hours in any one week.

(c) No truckdriver, watchman and/or fireman shall be permitted to work more than forty-eight (48) hours during any one week.

(d) The provisions of this article shall not apply to employees engaged in emergency repair work, involving the protection of life or property or repairs to machinery in the case of a breakdown or to permit the continued normal operation of such machinery, provided, however, that all such employees shall be paid at the rate of time and one-half their normal rate of compensation for all hours worked per week in excess of forty-four (44) hours per week.

2. No employee shall be permitted to work for a total number of hours in excess of the number of hours prescribed herein, whether he be employed by one or more employers.

ARTICLE IV—WAGES

1. No employee shall be paid at a rate less than thirty-two and a half cents ($32\frac{1}{2}\phi$) per hour.

2. This Article establishes a minimum rate of pay which shall apply, irrespective of whether an employee is actually compensated on a time-rate, piece-work performance or other basis.

3. Female employees performing substantially the same work as male employees shall receive the same rate of pay as male employees.

4. It is the policy of the members of this Industry to refrain from reducing the compensation for employment which compensation was prior to June 16, 1933, in excess of the minimum wage herein set forth, notwithstanding, that the hours of work in such employment may be reduced; and, unless since such date such adjustments have been made, all members of this industry shall endeavor to increase the pay of all employees in excess of the minimum wage, as herein set forth, by an equitable adjustment of all pay schedules.

ARTICLE V—GENERAL LABOR PROVISIONS

1. No person under sixteen (16) years of age shall be employed in this industry; nor any one under eighteen (18) years of age at operations or occupations which are hazardous in nature. The Code Authority shall submit to the Administrator within sixty (60) days after the effective date of this Code, a list of such operations or occupations. In any state an employer shall be deemed to have complied with this provision as to age if he shall have on file a certificate or permit duly issued by the authority in such State empowered to issue employment or age certificates or permits, showing that the employee is of the required age.

2. In compliance with Section 7 (a) of the Act it is provided:

(a) That employees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from the interference, restraint or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

(b) That, no employee and no one seeking employment shall be required as a condition of employment to join any company union or to refrain from joining, organizing, or assisting a labor organization of his own choosing, and

(c) That, employers shall comply with the maximum hours of labor, minimum rates of pay and other conditions of employment approved or prescribed by the President.

3. No employer shall reclassify employees or duties of occupations performed as they existed on October 1, 1933, or engage in any other subterfuge, for the purpose of defeating the purpose of the Act or of this Code.

4. No provision in this Code shall supersede any State or Federal Law which imposes on employers more stringent requirements as to age of employees, wages, hours of work, or as to safety, health, sanitary or general working conditions, than are imposed by this Code.

5. All employers shall post and keep posted complete copies of Articles III, IV, V and VI of this Code relating to hours, wages and labor in conspicuous places accessible to employees.

6. Every employer shall make reasonable provision for the safety and health of his employees at the place and during the hours of their employment.

ARTICLE VI—HOME WORK

1. All home work in this Industry is hereby prohibited, except by specific permission of the Administrator in each individual case, and provided employees engaged in home work shall be paid the same wage rates that are paid for identical occupations in the shop.

ARTICLE VII—DIVISIONAL ORGANIZATION

1. The Brush Manufacturing Industry shall be divided into the following divisions:

- (a) Toilet Brush Manufacturers' Division.
- (b) Shaving Brush Manufacturers' Division.
- (c) Paint and Varnish Brush Manufacturers' Division.
- (d) Household Brush Manufacturers' Division.
- (e) Industrial, Jewelers' and Dental Brush Manufacturers' Division.
- (f) Twisted-in-Wire Manufacturers' Division.
- (g) Wire Brush Manufacturers' Division.

2. Additional Divisions may from time to time be formed within the Industry with the approval of the Administrator.

ARTICLE VIII—ADMINISTRATION

ORGANIZATION AND CONSTITUTION

1. A Code Authority is hereby established to cooperate with the Administrator in the administration of this code and shall consist of twenty-one (21) members, or such other number as may be approved from time to time by the Administrator, to be selected as

hereinafter set forth. The Administrator in his discretion may appoint not more than three (3) additional members without vote, and without compensation from the industry, to serve for such period of time and to represent the Administrator or such group or groups as he may designate.

(a) The Code Authority shall consist of three (3) representatives of each of the above named divisions who shall be elected by each division through a fair method of election approved by the Administrator. Any member of the Industry within that particular division is eligible to vote at meetings of the division for the election of members representing the division upon the Code Authority. Under no circumstance shall the Code Authority be composed of persons more than one of whom is an officer, director, employee or agent of the same company or any subsidiary company.

2. Each trade or industrial association directly or indirectly participating in the selection or activities of the Code Authority shall impose no inequitable restrictions on its membership, and shall submit to the Administrator true copies of its articles of association, by-laws, regulations, and any amendments when made thereto, together with such other information as to membership, organization and activities as the Administrator may deem necessary to effectuate the purposes of the Act.

3. In order that the Code Authority shall at all times be truly representative of the Industry and in other respects comply with the provisions of the Act, the Administrator may prescribe such hearings as he may deem proper; and thereafter if he shall find that the Code Authority is not truly representative or does not in other respects comply with the purpose of the Act, he may require an appropriate modification in the method of election of the Code Authority.

4. Any member of the Industry shall be entitled to participate in and share the benefits of the activities of the Code Authority and to participate in the selection of the members thereof by assenting to and complying with the requirements of this Code and sustaining his reasonable share of the expenses of its administration. Such reasonable share of the expenses of the administration shall be determined by the Code Authority subject to the disapproval of the Administrator, on the basis of volume of business and/or such other factors as may be deemed equitable.

5. Nothing contained in this Code shall constitute the members of the Code Authority partners for any purpose. Nor shall any member of the Code Authority be liable in any manner to anyone for any act of any other member, officer, agent or employee of the Code Authority. Nor shall any member of the Code Authority, exercising reasonable diligence in the conduct of his duties hereunder, be liable to anyone for any action or omission to act under this Code except for his own willful mis-feasance or non-feasance.

6. If the Administrator shall determine that any action of a code authority or any agency thereof may be unfair or unjust or contrary to the public interest, the Administrator may require that such action be suspended to afford an opportunity for investigation of the merits of such action and further consideration by such code author-

ity or agency pending final action, shall not be effective unless the Administrator approves or unless he shall fail to disapprove after thirty (30) days' notice to him of intention to proceed with such action in its original or modified form.

7. The Code Authority shall have the following further powers and duties:

(a) To administer the provisions of this Code, provide for the compliance of the industry with its provisions and to propose and submit to the Administrator its recommendations for amendments and/or modifications of this Code which shall become effective as a part hereof upon approval of the Administrator after such notice and hearing as he shall specify.

(b) To adopt by-laws and rules and regulations for its procedure and for the administration and enforcement of the Code.

(c) To obtain from members of the Industry such information and reports as are required for the administration of the Code and to provide for submission by members of such information and reports as the Administrator may deem necessary for the purposes recited in Section 3 (a) of the Act, which information and reports shall be submitted by members to such administrative and/or government agencies as the Administrator may designate, which administrative and/or government agencies shall hold the same confidential except as may be directed by the Administrator or as may be required by law. Nothing in this Code shall relieve any member of the industry of any existing obligations to furnish reports to any government agency. No individual reports shall be disclosed to any other member of the Industry or any other party except to such governmental agencies as may be directed by the Administrator.

(d) To use such trade associations and other agencies as it deems proper for the carrying out of any of its activities provided for herein, provided that nothing contained herein shall relieve the Code Authority of its duties or responsibilities under this Code and that such trade associations and agencies shall at all times be subject to and comply with the provisions hereof.

(e) To secure from members of the Industry who assent to this code and/or participate in the activities of the Code Authority such proportionate payment of the reasonable expenses of maintaining the Code Authority as may be determined by the Code Authority to be fair and equitable.

(f) To recommend to the Administrator further trade practice provisions to govern members of the several Divisions in their relations with each other or with other industries and to recommend to the Administrator measures for industrial planning, including stabilization of employment.

ARTICLE IX—SALES PROVISIONS

1. Each division of the Industry may, by an affirmative vote of sixty percent (60%) in number and dollar volume of the manufacturers of such division, recommend an adequate system for cost finding, capable of uniform application within such division, and which members of such division shall adopt or conform their accounting systems to, within fifteen (15) days after its approval by the Admin-

istrator. Said system for cost finding shall be used by all members of the division as a basis for cost finding of all products of the division, and within such division no member shall sell such products below his individual cost as determined by the use of such cost finding system, except as hereafter provided.

(a) Any manufacturer of the Division may dispose of products which are known as "seconds", "close-out numbers", "sample stocks" and "sample line brushes" below cost if he first submits to an impartial agency approved by the Code Authority by registered mail a descriptive list of such products together with quantities and prices at which they will be offered, and the prices so named shall not be reduced unless and until the manufacturer files revised selling prices with such impartial agency, and thereafter, upon the sale of such products the manufacturer shall immediately notify such impartial agency advising the name and address of the buyer. In no case shall the sale of such products exceed such percent of the total volume of dollar sales of such manufacturer in one year, as may be determined by each Division from time to time, subject to the approval of the Administrator.

(b) Any manufacturer of the Division in order to meet bona fide competition in any specific instance may sell the products of such Division at a price not less than the lowest competing price of comparable items.

2. When a cost finding system shall have been adopted as prescribed above by any Division and the Code Authority finds that a manufacturer is selling the products of such Division in violation of this Article, it may require such manufacturer to submit to an impartial agency approved by the Code Authority relevant and complete data regarding such sales including all elements of cost properly and accurately figured, and if the Code Authority finds that such sales constitute a violation of this Code it may submit the same to the Administrator for appropriate action.

3. Any division of the Industry may elect through an affirmative vote of sixty percent (60%) in number and sixty percent (60%) in dollar volume to sell its products only upon open prices, terms and conditions filed by each member of such division, with such impartial agency as the division, with the approval of the Administrator, may determine. Each member of such division shall then immediately file with said agency his current price list and discount sheet at which he proposes to sell the products of such division and any changes in prices by any member of such division shall be filed with said agency and shall become effective immediately upon the filing thereof, or sixty (60) days after the effective date of this Code they shall become effective after such period or time as shall hereafter be established by the Code Authority with the approval of the Administrator. Such agency shall immediately notify all other members of the division of such changes and shall also make the same available to any other interested party who may apply for same. Variations from such open and publicly announced prices, terms and conditions, shall constitute an unfair method of competition.

ARTICLE X—TRADE PRACTICES

The following practices shall constitute unfair methods of competition and are prohibited:

1. No member of the industry shall falsely mark or brand any product of the industry which has the tendency to mislead or deceive customers or prospective customers, whether as to the grade, quality, quantity, substance, character, nature, origin, size, finish or preparation of any product of the industry.

2. No member of the Industry shall publish or cause to be published advertising (whether printed, radio, display or of any other nature) which is misleading or inaccurate in any material particular nor shall any member in any way misrepresent any product of the industry.

3. No member of the industry shall attempt to induce the breach of an existing contract between a competitor and his customer or source of supply; nor shall any such member interfere with or obstruct the performance of such contractual duties or services.

4. No member of the industry shall extend to certain purchasers any rebates, refunds, commissions, credits, special services, privileges or discounts not extended to all purchasers of the same class on like terms and conditions.

(a) Nor give allowances for advertising, or extra discounts, or datings on bills, or special credit terms, which are not extended to all purchasers of the same class under like terms and conditions.

(b) Nor make allowances and/or payments, directly or indirectly, to or for a customer in connection with that customer's cooperative advertising, which are not extended to all purchasers of the same class under like terms and conditions.

(c) Nor make allowances and/or payments, directly or indirectly, for space within and/or on a buyer's premises for any purpose whatsoever, which are not extended to all purchasers of the same class under like terms and conditions.

5. No member of the industry shall issue invoices, or other documents covering the sale of brushes in which the prices, terms, discounts, allowances, or any other condition or terms of sale or facts relating thereto are falsely stated; or issue invoices or other documents with the understanding that the buyer is to pay a price or receive any considerations that are different from those shown on the invoice.

6. No member of industry shall knowingly ship or deliver brushes which do not conform to samples submitted, or to specifications upon which prices are quoted or to other representations made prior to securing an order.

7. No member of the industry shall knowingly use or substitute materials inferior in quality or of a different nature and character than those specified by the purchaser and promised at the time the order is accepted.

8. No member of the industry shall either directly or indirectly exchange, promote, encourage or in any way assist in the exchange of brushes, other than those manufactured by him or bought for the purpose of resale.

9. No member of the industry shall ship or deliver any goods on consignment or engage in the practice of carrying accounts, as defined in Section 4 of Article II, whether in whole or in part, except that a manufacturer may take over a stock of goods on a consigned basis for legitimate credit reasons but in such case he shall immediately report the circumstances to the Code Authority and such stock of goods, so taken over, shall not be carried on consignment for a period longer than three months.

ARTICLE XI—FREIGHT CHARGES

1. No member of the Industry shall allow or pay, directly or indirectly, secretly or otherwise, freight and/or delivery charges except as follows:

(a) It shall be optional with each member of the Industry to allow and/or pay freight and/or delivery charges but such allowances shall be not greater than f.o.b. manufacturer's shipping point with actual freight as defined by Interstate Commerce Commission classifications, allowed or prepaid to any point within the United States, and in no case shall store door delivery be prohibited.

(b) In Zone 1, as defined under the Federal post office parcel post regulations surrounding the manufacturer's plant, such manufacturer may make delivery by any means at his command.

(c) If a manufacturer elects to allow or pay freight and/or delivery charges outside of Zone 1, as defined by Federal post office parcel post regulations, he may elect to ship by any means at his command provided the total allowances do not exceed the freight as described in Subsection (a) of this section.

ARTICLE XII—MODIFICATION

1. This Code and all the provisions thereof are expressly made subject to the right of the President, in accordance with the provisions of subsection (b) of Section 10 of Title I of the Act, from time to time to cancel or modify any order, approval, license, rule or regulation issued under said Act.

2. This Code, except as to provisions required by the Act, may be modified or amended on the basis of experience or changes in circumstances, such modifications or amendments to be based upon application to the Administrator and such notice and hearing as he shall specify, and to become effective on approval of the President unless otherwise provided.

ARTICLE XIII—MONOPOLIES

1. No provision of this Code shall be so applied as to permit monopolies or monopolistic practices, or to eliminate, oppress or discriminate against small enterprises.

ARTICLE XIV—NON-WAIVER OF CONSTITUTIONAL RIGHTS

1. By presenting this Code, those assenting thereto are not thereby waiving any of their constitutional rights.¹

¹ Deleted as per paragraph 2 of order approving this Code.

ARTICLE XV—RIGHT TO OBJECT

1. By presenting this Code, the members of the Industry do not hereby consent to any modification thereof and they reserve the right to object individually or jointly to any such modifications.¹

ARTICLE XVI—EFFECTIVE DATE

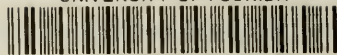
1. This Code shall become effective on the second Monday after its approval by the President.

Approved Code No. 360
Registry No. 1609-1-02

¹ Deleted as per paragraph 2 of order approving this Code.

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